9-63.000
PROTECTION OF PUBLIC ORDER

9-63.010
Overview

This chapter focuses on the investigation and prosecution of several federal criminal offenses including: aircraft piracy, destruction of aircraft, and firearms offenses. The Terrorism and Violent Crime Section of the Criminal Division has supervisory authority over the offenses in this chapter, unless otherwise noted. *See* USAM 9-130.200 (the Organized Crime Section has supervisory authority over some offenses in this chapter if they involve organized crime or labor/management disputes).

9-63.100 Aircraft Piracy and Related Offenses

Sections 46502, 46504, 46505, 46506, and 46507 of Title 49, United States Code, (formerly section 1472(i) through (n) of Title 49 Appendix) set forth the offenses of aircraft piracy and attempted piracy while in flight within or outside the special aircraft jurisdiction of the United States, interference with flight crew members or flight attendants while in flight within the special aircraft jurisdiction of the United States, carrying weapons or explosives aboard an aircraft, conveyance of false information or threats regarding certain offenses prohibited by 49 U.S.C. §§ 46502, 46504, 46505, 46506, and 46507 and certain common law offenses.

Pursuant to 28 U.S.C. § 538 (formerly 49 U.S.C. App. § 1472(o)), criminal violations of the aircraft piracy and related offense provisions are investigated by the Federal Bureau of Investigation (FBI). *See* Pub. L. 103-272, § 4(e)(1), 108 Stat. 1361. The Federal Aviation Administration (FAA) also has administrative responsibility to prevent and, where warranted, to punish such offenses by civil penalties. The aircraft piracy and related offenses are supervised by the Terrorism and Violent Crime Section (TVCS)(202) 514-0849.

See the following sections of the Criminal Resource Manual for more information regarding the investigation and prosecution of aircraft piracy and related offenses

General Overview	Criminal Resource Manual at 1401
1984 Aircraft Sabotage Act	Criminal Resource Manual at 1402
Public Law No. 103-272	Criminal Resource Manual at 1403
Antiterrorism and Effective Death Penalty Act of 1996	Criminal Resource Manual at 1404
Special Aircraft Jurisdiction of the United States	Criminal Resource Manual at 1405
Aircraft Piracy -- Venue	Criminal Resource Manual at 1406
Aircraft Piracy -- 49 U.S.C. 46502(a)	Criminal Resource Manual at 1407
Attempted Aircraft Piracy	Criminal Resource Manual at 1408
Indictment for Aircraft Piracy	Criminal Resource Manual at 1409
Death Penalty for Aircraft Piracy	Criminal Resource Manual at 1410
Interference With Flight Crew Members or Flight Attendants	Criminal Resource Manual at 1411
Certain Crimes Aboard Aircraft in Flight	Criminal Resource Manual at 1412
Carrying Weapons or Explosives Aboard Aircraft	Criminal Resource Manual at 1413
Attempts to Board Aircraft with Weapon or Explosive	Criminal Resource Manual at 1414
Deadly or Dangerous Weapons	Criminal Resource Manual at 1415
Specific Intent Not Required	Criminal Resource Manual at 1416
Concealment of Weapon	Criminal Resource Manual at 1417
False Information and Threats	Criminal Resource Manual at 1418
Aircraft Piracy Outside the Special Aircraft Jurisdiction of the United States	Criminal Resource Manual at 1419

9-63.135 Negotiated Pleas for Aircraft Piracy Within the Special Aircraft Jurisdiction of the United States

The Department advocates severe penalties for aircraft hijackers as a deterrent to future acts of piracy. Consequently, United States Attorneys must consult with the Criminal Division's Terrorism and Violent Crime Section before dismissing, in whole or in part, an indictment, information, or complaint containing such charges or entering into any agreement to forego an air piracy prosecution under 49 U.S.C. § 46502(a) (formerly 49 U.S.C. App. § 1472(i))(aircraft piracy within the special aircraft jurisdiction of the United States) in favor of a guilty plea to a lesser offense or decides not to prosecute fully an act of air piracy. *See also* USAM 9-16.020 (pleas, generally).

9-63.161 Prosecution Policy for Carrying Weapons or Explosives Aboard Aircraft (49 U.S.C. § 46505)

The Federal Aviation Administration (FAA) pre-board screening procedures have resulted in the detection of relatively large numbers of individuals who have attempted to board aircraft with deadly or dangerous weapons concealed on the individual's person or contained in accessible property.

In the overwhelming number of cases, the violators have no prior criminal record and there is no evidence that the person intended to use the weapon to commit an offense aboard the aircraft. Often, the concealed weapon is a knife, the possession of which does not constitute a violation of a Federal or local statute, or the weapon may only marginally constitute a "deadly or dangerous weapon." Some cases involve individuals other than law enforcement officers who have been issued permits by State or local governments to carry firearms, but are not exempted from the enforcement of this statute. As a matter of policy, Federal criminal prosecution of these types of offenders is not warranted, and would constitute an unproductive use of limited prosecutive resources.

Therefore, to achieve uniform application of 49 U.S.C. § 46505 (formerly 49 U.S.C. App. § 1472(l))(which prohibits carrying weapons or explosives aboard aircraft) while continuing to effectively deter this offense, the following guidelines should be considered in determining whether an offense will be prosecuted.

A. Aggravated cases should be vigorously investigated and criminally prosecuted under 49 U.S.C. § 46505. Such aggravated cases include, but are not limited to, the following examples:

1. The individual has endeavored by obvious and deliberate measures to preclude detection of a concealed weapon on his/her person or in his/her carry-on baggage;

2. Evidence available indicates that the subject intended to use the weapon in the commission of an offense; or

3. The weapon is any type of explosive or incendiary device.

B. Federal criminal prosecution can be declined for those offenses involving the following mitigating factors:

1. Individuals who are not law enforcement officers, but who nevertheless possess valid permits to carry a weapon;

2. Individuals who have no serious criminal records, and the circumstances surrounding the offense are clearly extenuating in nature; or

3. Individuals who possess items which are normally and acceptably used for a noncriminal purpose and which are only marginally of a deadly or dangerous character.

All unaggravated weapons violations will continue to be referred initially to State and local authorities for disposition. Where the State or local authorities are unwilling or unable to prosecute a weapons offense involving a firearm, a civil penalty should be sought pursuant to 49 U.S.C. § 46303 (formerly 49 U.S.C. App. § 1471(d)).

A United States Attorney electing to seek such a civil penalty under FAA regulations should have the Federal Bureau of Investigation (FBI) (or other investigative agency detecting such a violation) refer the violation to the

nearest FAA Civil Aviation Security Field Office for appropriate civil action. *See* USAM 9-76.100. The civil penalty provision is one of strict liability. *See United States v. Gutierrez*, 624 F. Supp. 759 (E.D.N.Y. 1985).

Individuals attempting to board aircraft with explosives or incendiary devices, including containers of gasoline or similar flammable liquids, should be criminally prosecuted under 49 U.S.C. § 46505.

See the following sections of the Criminal Resource Manual for a discussion of the law relating to offenses involving carrying weapons or explosives

Carrying Weapons or Explosives Aboard Aircraft	Criminal Resource Manual at 1413
Attempts to Board Aircraft with Weapon or Explosive	Criminal Resource Manual at 1414
Deadly or Dangerous Weapons	Criminal Resource Manual at 1415
Specific Intent Not Required	Criminal Resource Manual at 1416
Concealment of Weapon	Criminal Resource Manual at 1417

9-63.171 Prosecution Policy for False Information (49 U.S.C. § 46507(1))

Title 49 U.S.C. § 46507(1) makes it a crime to willfully and maliciously, or with reckless disregard for safety, convey false information, knowing such information to be false, concerning an attempt to do an act which would be a felony prohibited by various sections of Title 49.

To achieve uniform application of 49 U.S.C. § 46507(1) (formerly 49 U.S.C. App. § 1472(m)(1)), the following guidelines should be considered in determining whether an offense is to be prosecuted:

A. Aggravated cases should be fully investigated and prosecuted. Such aggravated cases include, but are not limited to, the following examples:

1. A hijacking hoax made by a person reporting the alleged hijacking and falsely attributing it to another; or

2. False information not readily disclosed as such resulting in delay of the flight or inconvenience to airport employees and passengers.

B. Federal criminal prosecution under 49 U.S.C. § 46507(1) may be declined in the following instances:

1. False statements made in the vicinity of the inspection point as a poor attempt at humor and suspected to be such by the individual to whom the statement is directed;

2. Statements made by individuals who have no prior criminal record and made under circumstances that are clearly extenuating in nature; or

3. Consistent with the considerations discussed above, cases in which the airlines do not deem the conduct of the individual to be of such seriousness as to warrant his/her removal from a flight or delay his/her travel schedule.

9-63.181 Prosecution Policy for Aircraft Piracy Outside the Special Aircraft Jurisdiction of the United States (49 U.S.C. § 46502(b))

No United States Attorney may initiate a criminal investigation, commence grand jury proceedings, file an information or complaint, or seek the return of an indictment in matters involving overseas terrorism without the express authorization of the Assistant Attorney General of the Criminal Division. *See* USAM 9-2.136. Once an approved indictment is returned, any disposition thereof shall be governed by the same criteria as that for a 49 U.S.C. § 46502(a) offense. *See* USAM 9-63.135

9-63.200 Destruction of Aircraft and Motor Vehicles and Related Offenses (18 U.S.C. §§ 31 - 35)

The Federal Bureau of Investigation (FBI) investigates incidents involving possible violations of Chapter 2 of Title 18, United States Code. The Terrorism and Violent Crime Section (TVCS) supervises offenses involving 18 U.S.C. §§ 31-35. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

See the following sections of the Criminal Resource Manual for a more detailed discussion of the law relating to 18 U.S.C. §§ 31-35 offenses

Definitions	Criminal Resource Manual at 1420
Changes to 18 U.S.C. § 32 -- 1984 Aircraft Sabotage Act	Criminal Resource Manual at 1421
Summary of Changes made to 18 U.S.C. § 32 by the Anti-Terrorism Act	Criminal Resource Manual at 1422
Destruction of Aircraft	Criminal Resource Manual at 1423
Extraterritorial Destruction of a Non-United States Civil Aircraft	Criminal Resource Manual at 1424
Threats to Destroy Aircraft	Criminal Resource Manual at 1425
Destruction of Motor Vehicles	Criminal Resource Manual at 1426
Imparting or Conveying False Information (Bomb Hoax)	Criminal Resource Manual at 1427
Bomb Hoax -- Venue	Criminal Resource Manual at 1428
Compromise of Civil Penalty -- 18 U.S.C. § 35(a)	Criminal Resource Manual at 1429
Jury Trial in Civil Action -- 18 U.S.C. § 35(a)	Criminal Resource Manual at 1430

9-63.221 Prosecutive Policy for 18 U.S.C. § 32(b)

Authorization shall be obtained from the Assistant Attorney General of the Criminal Division before an indictment is returned alleging a violation of 18 U.S.C. § 32(b), the Aircraft Sabotage Act. This is consistent with the policy for 49 U.S.C 46502(b) (formerly 49 U.S.C.App. § 1472(n)), which relates to acts of air piracy committed against foreign civil aircraft which are outside the special aircraft jurisdiction of the United States. *See* USAM 9-2.136 and 9-63.181.

9-63.231 Prosecutive Policy for Threats to Destroy Aircraft

Subsection (c) of Title 18, section 32 prohibits the willful imparting or conveying of threats to do anything to destroy or damage aircraft or aircraft facilities which would violate paragraphs (1) through (5) of subsection (a) or paragraphs (1) through (3) of subsection (b). The threat must be made "with an apparent determination and will to carry the threat into execution."

As with the offense of communicating false information regarding aircraft piracy (*see* USAM 9-63.171), if there is no reason to believe that the individual has the motivation or ability to carry out the threat, there is no reason to expend the resources of the Federal government in criminally prosecuting such an individual. If, however, the threat is issued under circumstances where a reasonable person would believe that it would be carried out and the threat involves an action that would likely endanger the safety of the aircraft, such conduct should be prosecuted vigorously.

9-63.241 Prosecutive Policy for Destruction of Motor Vehicles -- 18 U.S.C. § 33

Section 33 makes it a Federal crime willfully, with intent to endanger the safety of any person on board or anyone he/she believes may be on board, to disable, destroy, tamper with, or place or cause to be placed any explosive or other destructive substance in, upon, or in proximity to any motor vehicle which is used, operated, or employed in interstate or foreign commerce, or its cargo or material used or intended to be used in connection with its operation.

Section 33 of Title 18 is not intended to "federalize" every attack upon a commercial motor vehicle. Damaging a motor vehicle with the intent of injuring the driver or any passenger on board would violate a number of State laws. It is the intent of the Congress that State authorities continue to play the principal role in this area. *See* S.Rep. No. 225, 98th Cong, 1 Sess., at 324, *reprinted in* 1984 U.S. Code Cong. and Adm. News at 3500. Understandings should be reached with State and local authorities reflecting the limited nature of the Federal role. Questions concerning this statute should be directed to the Terrorism and Violent Crime Section, except for questions concerning its application in labor-management disputes, which should be directed to the Labor-Management Unit of the Organized Crime and Racketeering Section. *See* USAM 9-130.200

9-63.251 Prosecutive Policy for Imparting or Conveying False Information (Bomb Hoax) -- 18 U.S.C. § 35

Section 35 of Title 18 provides civil and criminal felony provisions for the conveyance of false information regarding attempts or alleged attempts to destroy, damage, or disable aircraft, aircraft related facilities or motor vehicles and their related facilities.

The Department believes that civil penalties are an effective punishment for the disruption caused by pranksters and jesters who falsely report the presence of bombs or explosives aboard aircraft. Under 18 U.S.C. § 35(a), willfulness need not be shown and the penalty will be recoverable even if the false report was the result of a poor attempt at humor, irritation or fatigue. *See United States v. Rutherford*, 332 F.2d 444 (2d Cir., *cert. denied*, 377 U.S. 994 (1964); *United States v. Sullivan*, 329 F.2d 755 (2d Cir.), *cert. denied*, 377 U.S. 1005 (1964).

The essence of the "impart or convey information" element is the impression created in the minds of those who hear the remark and observe the person making it. These impressions should be tested under the objective standard of what reasonable persons would conclude from the words actually spoken, and from the conduct and demeanor of the speaker. In general, the civil penalty should not be sought where the words amounted to an inquiry, conjecture or speculation, as distinguished from an affirmative imparting of information. Also, if an action is to be initiated, the statement should not be inherently unbelievable and the speaker's conduct and deportment should be consistent with his/her words. However, even if the speaker follows his/her false report with an immediate disclaimer of malevolent intent, he/she has aroused suspicion or doubt which, in the interest of the travelling public's safety, cannot be ignored. A civil penalty should be sought under these circumstances. *See* H.R. Rep. No. 263, 89th Cong., 1 Sess., pp. 1-2 (1965). As a matter of practice, the maximum penalty under the statute should be sought.

In the interest of uniformity, Departmental policy requires that all civil penalty actions under 18 U.S.C. § 35(a) be brought in the district in which the defendant resides. This policy comports with the general practice followed by other Divisions when enforcing civil sanctions.

See the following sections of the Criminal Resource Manual for additional legal issues

Imparting or Conveying False Information (Bomb Hoax) Criminal Resource Manual at 1427

Imparting or Conveying False Information (Bomb Hoax) -- Venue Criminal Resource Manual at 1428

9-63.260 Death Penalty

As of September 13, 1994, 18 U.S.C. § 34 carries a viable death penalty for violations of 18 U.S.C. § 32 or § 33 where death results to any person. It is necessary that the Attorney General approve all recommendations by Federal prosecutors to seek the death penalty. *See* USAM 9-10.000 (capital crimes).

9-63.500 Firearms Generally

The Department of the Treasury's Bureau of Alcohol, Tobacco and Firearms (BATF) has primary investigative jurisdiction over violations of the Federal firearms statutes. The Federal Bureau of Investigation, the Postal Service, and the Immigration and Naturalization Service may exercise investigative jurisdiction over violations of Federal firearms statutes when such violations are ancillary to investigations within their jurisdiction. The Terrorism and Violent Crime Section (TVCS) of the Criminal Division exercises supervisory jurisdiction over the Federal firearms statutes (202) 514-0849.

A substantive discussion of firearms statutes is contained in the Criminal Division monograph *Federal Firearms Offenses*, which has been published as part of the Office of Legal Education's Litigation Series, and is also available in USABook format.

The Gun Control Act, The National Firearms Act, and the National Firearms Registration and Transfer Record are also discussed in the Criminal Resource Manual

See also USAM 9-60.1100 (discussion of firearms offenses in the context of domestic violence (18 U.S.C. §§ 922(g)(8) and (9)).

9-63.514 Prosecutions Under 18 U.S.C. § 922(g)

In most prosecutions under 18 U.S.C. § 922(g), the defendant is a previously convicted felon who is in possession of a firearm. However, some cases involve weapons possession by a defendant who simultaneously maintains more than one disqualifying status under § 922(g). For example, a defendant may be both a convicted felon and a fugitive from justice, or a convicted felon and an illegal alien. By memorandum dated November 3, 1992 (*see* the Criminal Resource Manual at 1431), the Criminal Division provided policy guidance to the United States Attorney's Offices on the propriety of charging and convicting a defendant who falls under more than one class of persons disqualified from possessing firearms under § 922(g).

In substance, it is appropriate to charge a defendant who has multiple disqualifying factors with a separate count of unlawful weapons possession under § 922(g) for each disqualifying status. In addition, it is appropriate to present evidence to the factfinder regarding each disqualifying status and to seek a verdict on each separate count. However, because § 922(g) was designed to prohibit the possession of firearms by individuals Congress deemed dangerous, and not to punish such persons solely for having a certain status under the law, a defendant

should not be punished separately under two or more separate subdivisions of § 922(g) for a single instance of unlawful weapons possession.

Federal prosecutors should not seek consecutive or concurrent sentences in this situation. Rather, the government should urge the court to "merge" or "combine" the multiple § 922(g) convictions based on different statuses into one conviction for sentencing purposes. *See United States v. Throneburg*, 921 F.2d 654, 657 (6th Cir. 1990) (merging separate convictions under § 922(g)(1) for possession of firearm and ammunition for sentencing purposes); *United States v. Osorio Estrada*, 751 F.2d 128, 135 (2d Cir. 1984), *cert. denied*, 474 U.S. 830 (1985) ("combining" separate convictions under 21 U.S.C. §§ 848 and 846).

The merger or combining of the convictions under separate subdivisions of § 922(g) achieves several salutary effects. First, it protects the government's interest in safeguarding the validity of each conviction on appeal, should the defendant challenge his inclusion in one of the disqualifying statuses charged in the indictment. *See United States v. Aiello*, 771 F.2d 621, 634 (2d Cir. 1985) (procedure provides for reactivation of combined or merged conviction if appellate court reverses single conviction for which defendant was sentenced). Second, it assures that the defendant is not punished inappropriately solely for having a certain status under the law. *See United States v. Winchester*, 916 F.2d 601, 605-08 (11th Cir. 1990) (ruling that it is inappropriate to sentence a defendant with two disqualifying statuses to consecutive terms of imprisonment for a single instance of unlawful weapons possession).

9-63.515 Scienter Standards in National Firearms Act Violations and Other Firearms Offenses

In *Staples v. United States*, 114 S. Ct. 1793, 1804 (1994), the Supreme Court ruled that, to obtain a conviction for an unregistered automatic weapon, in violation of the National Firearms Act (NFA) (26 U.S.C. § 5861(d)), the government must prove that the defendant knew of the features or characteristics of the weapon that brought it within the scope of the criminal proscription. In the wake of the *Staples* decision, the Solicitor General's Office has concluded that the government should take the position that in all cases prosecuted under the NFA, the government must prove that the defendant knew the features of the firearm that brought it within the scope of the Act. The Criminal Division has issued a memorandum to all United States Attorneys explaining this policy, and has provided suggested jury instructions regarding the knowledge element of a violation of the NFA.

In addition to NFA violations, the Criminal Division believes that the same scienter standard should apply to 18 U.S.C. § 922(o), which makes it unlawful to transfer or possess a machinegun. In such cases, prosecutors should anticipate the requirement that they must prove the defendant's knowledge that the firearm at issue was a machinegun, and they should accede to defense requests for an instruction requiring a finding of such knowledge.

9-63.516 Charging Machinegun Offenses Under 18 U.S.C. § 922(o), Instead of Under the National Firearms Act

Section 922(o) of Title 18 makes it unlawful to transfer or possess a machinegun made after May 19, 1986. In addition, under the NFA, it is unlawful to manufacture or possess a machinegun without first registering it with the Secretary of the Treasury and paying applicable taxes. 26 U.S.C. §§ 5822, 5861. As a result of the enactment of 18 U.S.C. § 922(o), the Secretary of the Treasury no longer will register or accept any tax payments to make or transfer a machinegun made after May 19, 1986. Accordingly, because it is impossible to comply with the registration and taxation provisions in the NFA, prosecutors should charge the unlawful possession or transfer of a machinegun made after May 19, 1986 under § 922(o).

9-63.517 Supreme Court Decision in Bailey v. United States

Under 18 U.S.C. § 924(c)(1), a person who "during and in relation to any crime of violence or drug trafficking crime . . . . uses or carries a firearm" is subject to a mandatory minimum sentence. In *Bailey v. United States*, 116 S. Ct. 501 (1995), the Supreme Court held that conviction of a defendant for "use" of a firearm under § 924(c) requires "evidence sufficient to show an *active employment* of the firearm by the defendant." *Id*. at 505. The Court rejected the government's contention that storing a weapon near drugs or placing a firearm where it is available for use during a drug transaction constitutes "use" of a firearm under § 924(c). The Court explained that "use" under § 924(c)(1) only "includes brandishing, displaying, bartering, striking with, and most obviously, firing or attempting to fire, a firearm." *Id*. at 508.

The decision in *Bailey* substantially altered prior law concerning the evidence necessary to establish "use" under § 924(c). To assist Federal prosecutors in dealing with the many ramifications of the decision, the Criminal Division sent a memorandum to all United States Attorneys, dated December 13, 1995. Please refer to this memorandum for advice on *Bailey*-related issues, including challenges to prior convictions, and current and future cases prosecuted under § 924(c).

9-63.900 Federal Explosives Statutes -- 18 U.S.C. §§ 841 - 848

For a discussion of the investigative jurisdiction for federal explosive statutes contained in 18 U.S.C. §§ 841-848, *see* the Criminal Resource Manual at 1438. Supervisory authority for the explosives statutes rests with the Terrorism and Violent Crime Section (TVCS) (202) 514-0849.

Further information is contained in the Criminal Resource Manual

Federal Explosives Statutes -- 18 U.S.C. §§ 841 - 848	Criminal Resource Manual at 1437
Explosive Materials -- Unlawful Acts -- 18 U.S.C. § 842	Criminal Resource Manual at 1439
Scienter for offenses under § 842	Criminal Resource Manual at 1440
Discussion of Selected § 842 Offenses	Criminal Resource Manual at 1441
Plastic Explosives Convention	Criminal Resource Manual at 1442
Other Statutes Affected -- 18 U.S.C. § 842 Cases	Criminal Resource Manual at 1443
Penalty Provisions for § 842 Offenses	Criminal Resource Manual at 1444
Discussion of Selected § 844 Offenses	Criminal Resource Manual at 1445
Other Statutes Affected -- 18 U.S.C. § 844 Offenses	Criminal Resource Manual at 1446

9-63.902 Restraint in Exercise of Federal Jurisdiction

The Criminal Division interprets 18 U.S.C. § 848 as a statement of congressional intent that the Federal government -- absent a specific Federal interest -- will not become involved in bombing matters that can be adequately investigated and prosecuted by local authorities. This interpretation of congressional intent is confirmed by the congressional hearings which led to passage of the Federal explosives statute, wherein Administration witnesses testified that Federal jurisdiction would be exercised only upon a determination by the Attorney General or his/her designee that a Federal prosecution is in the public interest. The members of the congressional committees were explicitly assured that the Department of Justice would not displace the efforts of State and local officials in bombing matters. Accordingly, Federal prosecutors should coordinate with state/local law enforcement authorities before commencing a Federal prosecution.

9-63.922 Limitation on Use of Section 844(e) (Bomb Threat)

Section 844(e) is a specific intent offense that prohibits the use of the mails, telephone, or other instruments of interstate or foreign commerce to make threats or convey false information. As amended by the Antiterrorism Act of 1996, § 724, 110 Stat. at 1300, section 844(e) also prohibits whoever, "in or affecting interstate or foreign commerce," makes false bomb or arson reports. *Id*.

The provisions of 18 U.S.C. § 844(e) should not be used unless a substantial Federal interest is involved. For example, section 844(e) should not be used in a situation involving a bomb threat by a student against a school, or by an employee of an organization other than the Federal government. These types of cases should be deferred to State or local authorities whenever possible. The Federal Bureau of Investigation has been instructed to decline investigation of § 844(e) violations unless the identity of the offender is readily ascertainable or known, or a pattern or plan of these offenses appears to exist.

9-63.1100 Tampering with Consumer Products -- 18 U.S.C. § 1365

For a discussion of the investigative jurisdiction for consumer product tampering offenses, see the Criminal Resource Manual at 1447. The Terrorism and Violent Crime Section (TVCS) has supervisory authority over consumer product tampering offenses. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

See the following sections of the Criminal Resource Manual for more information relating to tampering with consumer products

Tampering with Consumer Products -- The Offenses	Criminal Resource Manual at 1448
Tampering with a Consumer Product	Criminal Resource Manual at 1449
Tainting a Consumer Product	Criminal Resource Manual at 1450
Communicating False Information about a Consumer Product	Criminal Resource Manual at 1451
Threatening to Tamper with a Consumer Product	Criminal Resource Manual at 1452
Conspiracy to Tamper with a Consumer Product	Criminal Resource Manual at 1453
Tampering with Consumer Products -- Definitions	Criminal Resource Manual at 1454

9-63.1110 Tampering with Consumer Products -- Prosecutive Policy

The Federal Anti-Tampering Act, Pub.L. No. 98-127, 97 Stat. 831, October 13, 1983, created section 1365 of Title 18, United States Code, which makes it an offense to tamper with consumer products or to engage in related conduct. It was enacted in response to the Tylenol poisoning deaths in the Chicago area in the fall of 1982.

As in the past, State and local authorities will continue to play a large and significant role in the investigation and prosecution of alleged tampering. The Federal Anti-Tampering Act does not preempt prosecution by State and local authorities for conduct which would be in violation of 18 U.S.C. § 1365. Hence, referral to such authorities is appropriate when no significant Federal interest requires vindication (e.g., in an isolated instance, when there is no serious impact upon commerce, when the wrongdoer has been identified and State or local authorities are prepared to handle the case, etc.).

9-63.1200 Gangs and Gang-Related Youth Violence -- Approval/Consultation Requirements

There are no specific notification, consultation, or prior approval requirements that apply exclusively to gang investigations or prosecutions. However, there are some statutes which may be used in many different types of cases, including gang violence cases, which require prior approval, consultation, or notification. They include the following:

- *RICO* (18 U.S.C. § 1961 *et seq.*): Prosecutors must obtain the prior approval of the Criminal Division, Organized Crime and Racketeering Section (OCRS). *See* USAM 9-110.320.
- *Violent Crimes in Aid of Racketeering* (18 U.S.C. § 1959): Prosecutors must obtain the prior approval of the Criminal Division, Organized Crime and Racketeering Section (OCRS). *See* USAM 9-110.810.
- *"Three Strikes"* (18 U.S.C. § 3559(c)): When filing a Three Strikes case, send an Urgent Report to the attention of the Director of the Executive Office for United States Attorneys (EOUSA). The Terrorism and Violent Crime Section (TVCS) is available to assist in handling the issues arising out of the Three Strikes provision. Contact TVCS attorneys at (202) 514-0849. *See* USAM 9-60.020 for additional information about "Three Strikes."

In a June 19, 1995 memorandum from the Assistant Attorney General, changes were made to the USAM relating to notification, consultation and approval requirements. The changes which may arise in the gang context include:

Consultation is no longer required in:

- Hobbs Act cases (18 U.S.C. § 1951) in which local prosecutor objects to prosecution
- Murder for Hire (18 U.S.C. § 1958) in which local prosecutor objects to prosecution

Criminal Division approval to proceed against juvenile as an adult is no longer required. In place of Department approval, notification to Criminal Division is required prior to filing any motion to transfer to adult proceeding (notify Terrorism and Violent Crime Section (TVCS) attorneys. *See* USAM 9-8.000 *et seq.* (Juveniles).

Consultation is no longer required prior to charging defendant with the Continuing Criminal Enterprise (CCE) statute's (21 U.S.C. § 848) mandatory life sentence provision.

See the following sections of the Criminal Resource Manual for additional information about gang investigations and prosecutions

Resource Material	Criminal Resource Manual at 1455
Gang Migration/Intelligence Sharing	Criminal Resource Manual at 1456
Criminal Street Gangs Statute -- 18 U.S.C. § 521	Criminal Resource Manual at 1457
Sample Enhanced Penalty Information -- 18 U.S.C § 521	Criminal Resource Manual at 1458
Department Memorandum -- Anti-Violent Crime Initiative	Criminal Resource Manual at 1459

9-63.1205 Death Penalty Protocol

A number of statutes used in gang prosecutions require compliance with the Department's "Death Penalty Protocol," which was established on January 27, 1995. In *all cases for which death is a possible penalty* (regardless of whether a district intends to seek the death penalty), a prosecution memorandum and death penalty evaluation must be submitted. *See* USAM 9-10.000.

9-63.1220 Youth Violence

Experience has shown that prosecutors cannot afford to ignore the juvenile gang members. If only the adult members of the gang are investigated and prosecuted, juveniles will fill the void and the gang will survive. If a gang is being prosecuted Federally, it may also be ill-advised to proceed with local prosecutions of the juveniles, unless the juveniles are pleading guilty and cooperating. A concurrent State or local prosecution requires repeated exposure of witnesses, which presents security concerns.

In a May 13, 1996 memorandum from the Attorney General (and others) to all United States Attorney Offices and Department of Justice law enforcement agencies a youth violence initiative was announced. The memorandum provides specific guidance to United States Attorneys' Offices. Prosecutors involved in the implementation of the strategies outlined in this memorandum are encouraged to call upon the expertise of the various components of the Department, including the Terrorism and Violent Crime Section, and to share successful strategies with the Counsellor to the Attorney General for Youth Violence, Kent Markus, (202) 514-3008.

See also USAM 9-8.000 (Juveniles).